



RIGHTS STUFF

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Woman Wins Right To Pursue ADA Complaint

Bernadette Jankovich began working for Coupled Products, LLC, in 1996 as a metalwares operator. The company is located in Columbia City, Indiana.

In 2001, a hydraulic press crushed Ms. Jankovich's right hand and two of her fingers had to be amputated. Her doctor released her to return to work in January, 2002, with some restrictions. By April, he released her to return to work to her regular duties, but with the restriction that she be accommodated as to the type of machinery she would operate. She also could not work more than eight hours a day, could not operate a foot pedal and could not stand all day. Until November, 2007, she primarily performed the job of manual staker operator, and Coupled Products honored her restrictions.

In November, 2007, however, Ms. Jankovich's new supervisor, Judy Harlan, assigned her to operate a bender machine. She complied, even though she believed this violated her medical restrictions. Within two hours of doing this job, she had swelling in her right arm and right hand as well as neck pain. She told Ms. Harlan about her problems, who told her that she had checked her medical restrictions and that nothing prevented her from operating the bending machine. Ms. Jankovich then took the rest of the day off to see her doctor. Her doctor gave her a letter that described Ms. Jankovich's severe arthritis and said that he believed she would benefit "greatly" from returning to the manual staker machine instead of the bending machine.

She met with Ms. Harlan, her union representative and people from human resources, and asked that she be accommodated based upon her medical restrictions. Coupled Products said that it had automated some of the manual staker positions and so they had a smaller number of that position available. The company said that her request for an accommodation was "not possible" and put her on involuntary medical leave. They said they would set up an appointment with a company doctor to evaluate her, but did not follow up. They invited her doctor to look at the work site, but he said he was not available to do that. A few months later, Coupled Products terminated Ms. Jankovich's employment based on a company-wide lay off without ever having called her back to work. She sued, alleging she had been discriminated against on the basis of her disability.

The Court found that she was a qualified individual with a disability, in that she was an amputee with severe arthritis who had done her job for several years. The Court also found that Coupled Products was aware of her disability based on its history of providing her with accommodations before November of 2007. And the Court also found there was reason to believe that Coupled Products had not reasonably accommodated her disability after November 2007. Thus, it denied Coupled Product's motion for summary judgment, and the case will continue.

The case is Jankovich v. Coupled Products, LLC, 2010 WL 1838355 (U.S. D.Ct. N.D. IN 2010). ♦

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Dorothy Granger

Mayor

Mark Krizan

Corporation Counsel

Kevin Robling

BHRC
PO BOX 100
Bloomington IN
47402
349-3429
human.rights@
bloomington.in.gov



Criminal Conviction Grounds For Eviction

At the BHRC, we frequently get calls about whether a landlord may legally evict a tenant in public housing if the tenant is convicted of a crime. This is not an issue that falls under the Bloomington Human Rights Ordinance, as it doesn't raise a question of discrimination on the basis of sex, race, religion, disability, color, national origin, ancestry, sexual orientation or gender identity. However, since it comes up so often, it seems worthwhile to write about a recent Indiana Court of Appeals decision that said, yes, it is legal to evict a tenant under these circumstances, and to evict the tenant's family as well.

Erica Bishop rented an apartment from the Housing Authority of South Bend. She was listed on the lease as a tenant, along with her ten children, including Derek Bishop. The lease said that anyone listed as a tenant would be considered to be a tenant until the housing authority received notice that he or she had moved out. It also said that if any tenant committed a crime, that would be considered to be a "serious violation of material terms of the lease and will be grounds for termination of the lease and eviction from the dwelling unit."

On July 18, 2008, Derek Bishop,

who was 19 at the time, committed an armed robbery at a store located less than a block from the Bishop apartment. Two weeks later, the housing authority sent Erica Bishop a thirty-day "notice to terminate lease for criminal activity." When she didn't move out within 30 days, the housing authority began eviction proceedings. She sued, and lost.

Mrs. Bishop said that her son Derek was not a member of her household at the time of his arrest. She claimed he had moved out in February or March of 2008 to live with his girlfriend. But she had not given notice to the housing authority that he had moved out, as the lease required. When Derek was arrested, he gave his mother's apartment as his address. He told the police that he got the bandana he used to cover his face during the robbery "out of my sister's bedroom at my house." The Court said there was sufficient evidence to find that Derek was still a resident of Mrs. Bishop's apartment at the time he committed the crime.

Mrs. Bishop also argued that neither she nor any of her other nine children had any knowledge or involvement in Derek's crime. But the U.S.

Supreme Court has held that "[r]egardless of knowledge, a tenant who 'cannot control . . . criminal activities by a household member which threaten the health or safety of other residents, is a threat to other residents and the project.'" The Court said that it was "reasonable for Congress to permit no-fault evictions in order to 'provide public and other federally-assisted low-income housing that is decent, safe, and free from illegal drugs.'"

And Mrs. Bishop argued that the lease between her and the housing authority amounted to "an illegal contract" because the housing authority had a "prodigious amount of bargaining power." The Court found that the terms of the contract were required by HUD. To her claim that the lease violated "basic fairness," the Court noted that she lived in the five-bedroom apartment rent-free for five years and paid only \$23 a month thereafter. In return, she was required to comply with the terms of the lease. Under these facts, the Court declined to find the lease to be "unconscionable."

The case is Bishop v. The Housing Authority of South Bend, 920 N. E. 2d 772 (Indiana Court of Appeals 2010). ♦

Ft. Wayne Business Posts Sign Saying "No Burmese"

According to recent news reports, Ft. Wayne is home to about 5,000 Burmese people, the largest Burmese concentration in the United States.

Recently, Ricker Oil Company's coin-operated laundry in Ft. Wayne posted a sign that said "For Sanitary Purposes, There Are No Burmese Allowed." Apparently the sign was posted because Burmese people

often chew betel nut and spit the residue, which can result in red stains that are hard to remove.

Businesses are within their legal rights to prohibit actions such as spitting, but they are likely not within their rights to forbid members of an entire group of people from entering their store because of the actions of some members of the group.

The president of the company, Jay Ricker, said that the sign was removed after they received complaints and that they were considering taking disciplinary action against the employee who posted it. He also posted an apology on youtube.com.

The Ft. Wayne Metropolitan HRC is considering filing a complaint against the store. ♦



Housing Authority Wins Disability Case

Dewayne Jones began renting an apartment from the South Bend Housing Authority in September 2000. His lease required him to keep his apartment clean and safe, and when he failed to do so, he was placed on probation.

On March 24, 2004, the fire alarm in Mr. Jones' apartment was triggered. The housing authority staff responded and saw that cigarette butts had burned through a plastic bag, lighting a chair on fire. They also found his apartment to be "dirty, unsanitary and in a deplorable condition." The day of the fire, they gave Mr. Jones written notice that they were terminating his lease and gave him seven days to file a grievance. He tried to file a grievance on April 1, but the staff told him he was too late. He tried to make a rent payment that same day, but the staff refused his payment.

Mr. Jones sued, saying that the

housing authority had violated his rights under the ADA, the Rehabilitation Act and the Constitution, and had violated his lease. He lost at trial and also on appeal.

During the trial, Mr. Jones said that he had congestive heart failure, hypertension, asthma or lung problems and diabetes. He said he was able to keep his apartment clean, but that he "can't stand the smell of bleach and ammonia." He said he had some days when his "legs don't want to work," but on the day of the fire, he said he was not having problems walking. He said that his apartment was dirty because he did not know how to clean, but didn't say he had a mental impairment that kept him from learning how to clean.

The trial court found that Mr. Jones was physically capable of cleaning his apartment, that his dislike of the smell of bleach and ammonia was

not a disability under the law and that he could use other cleaning agents.

The Court of Appeals agreed, noting that the lease required Mr. Jones to keep his apartment clean and that there was not evidence that his disability kept him from keeping the apartment clean. Mr. Jones admitted that he had never asked the housing authority for any type of accommodation to help him comply with the lease.

The Court of Appeals found that the housing authority should have accepted Mr. Jones' grievance on April 1, but said that remanding the case didn't make sense at this point, as he has now had a full trial and an appeal.

The case is Jones v. The Housing Authority of the City of South Bend, 915 NE 2d 490 (Ind. Ct. App. 2009). ♦

California Considers Making Attacks On Homeless People A Hate Crime

The California House passed a bill in May that will, if signed into law, deem violence against homeless people or their property a hate crime for civil litigation.

The author of the bill, Assemblywoman Bonnie Lowenthal, said her intent was to help crack down on beatings, stabbings and shootings that target an extremely vulnerable population. She said, "There is just a tremendous amount of violence perpetrated against homeless people because they are easy prey."

At least two homeless people have been killed in California in recent years. Bernice Nickson was stabbed to death in April 2010, while she slept on a bench in Sacramento. John Robert McGraham was burned to death in Los Angeles in 2008.

Under the bill, people who attack a homeless person would not face enhanced criminal penalties. But the victim could sue the offender in civil court for up to \$25,000 in civil penalties and exemplary damages.

The bill passed the California Assembly on a vote of 46 to 21 and now goes to the state senate. Opponents of the bill say that it could clog the courts with frivolous or marginal lawsuits and that there is no proof that higher civil penalties will lead to fewer attacks on homeless people.

Article based on "California Assembly Adds Homeless to Hate Crime Bill," by Jim Sanders, Sacramento Bee, www.mclatchydc.com/2010/5/7/10. ♦



Council For Community Accessibility Announces ADA Anniversary Celebration

The City of Bloomington Council for Community Accessibility is hosting a public celebration to mark the 20th anniversary of the Americans with Disabilities Act of 1990 (ADA) on Thursday, July 29, 2010.

The celebration will begin at 6 p.m. in the Fountain Square Ballroom, 101 W. Kirkwood Avenue. Activities include presentation of a proclamation by Mayor Mark Kruzan, a poster competition, an art display and a free concert by musical duo Liz Pennock and Dr. Blues.

Pennock is internationally known for her blues and boogie woogie piano playing. She and her husband, Dr. Blues, have been performing together since 1983. The piano/guitar team captivates audiences with their vast repertoire of classic, contemporary and original blues. For more information about the duo, visit <http://www.lizpennock.com/>.

Visual artists whose work will be displayed at the July 29 event will be announced soon. Along with work by artists, the winners of the

accessibility poster contest will be honored.

The event is free and open to the public. Support for the event comes from WFIU, Ivy Tech Community College-Bloomington, Fourwinds Resort & Marina, and the City of Bloomington Community and Family Resources Department. For information, contact Craig Brenner, Special Projects Coordinator, at 349-3471 or brenner@bloomington.in.gov. ♦

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PO Box 100
Bloomington IN 47402**